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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,612

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EXAMINER

CHEUNG, VICTOR

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

11/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/766,612

Applicant(s)

BEATTY ET AL.

Examiner

Victor Cheung

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-7 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. Amendments and arguments dated 9/5/2007 have been received.

Claims 1-2, 4-7, and 9-18 are now pending.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 5-7, 10, 12, 14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw et al. (US Patent No. 5,565,316) in view of Corder (US Patent No. 5,387,104), Knutson (US Patent No. 7,050,753), and Whitehurst et al. (US Patent No. 6,978,115).

Re Claims 1 and 12: Kershaw et al. disclose a method for providing an online exam comprising receiving an online exam (Col. 10, Line 45-Col. 11, Line 2) having a plurality of questions (Col. 674, Lines 64-67), presenting the questions to a student via an electronic display (Col. 675, Line 6-9), and receiving answers to the questions and storing the answers (Col. 675, Lines 10-11). Kershaw et al. disclose that display options such as time remaining can be displayed and optionally turned off by the student (Fig. 41, No. 2261; Col. 31, Lines 33-40). Kershaw et al. additionally disclose receiving profile information based upon a particular student, the profile providing information to result in scripts being run for special conditions (Fig. 49, No. 426; Col. 41, Lines 27-36; Col. 28, Line 64-Col. 29, Line 1).

However, Kershaw et al. do not specifically disclose presentation options in an online profile based upon an individual educational plan.

Corder teaches, as part of an individualized lesson plan, determining an optimal method of cognitive strategy for presenting information to a student including Braille devices, large screens, speech processing, touch screens, voice recording, etc., (Fig. 1; Col. 9, Lines 20-27; Col. 10, Lines 1-46) and storing the optimal cognitive strategy for later retrieval (Col. 13, Lines 24-28).

Knutson teaches obtaining a learning profile and converting the learning profile into a learning profile object model or metadata, the object model or metadata containing learning proclivities, preferences, attributes, characteristics, etc., of the user (Col. 20, Lines 48-61). The object model and metadata are used to customize the presentation of content (Col. 12, Lines 13-30) so that each student can be taught while maximizing cognitive assimilation (Col. 2, Lines 6-21; Col. 11, Lines 42-46). The system also includes a testing module to test the subjects provided to the user (Col. 16, Lines 65-67). Knutson also teaches that a learning template, which is correlated to learning style of instruction, is continuously and dynamically updated based on factors such as performance on testing (Col. 4, Line 64-Col. 5, Line 5).

Whitehurst et al. disclose compiling data relating to use of instructional strategies and performance of the student in answering the plurality of questions (Col. 15, Lines 51-55; Col. 16, Lines 1-4). Whitehurst et al. also disclose modifying the instructional strategies based at least in part on the data relating to the use of the instructional strategies (as in claim 12) (Col. 15, Lines 51-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an online profile based upon an individual educational plan to provide presentation options to a student, thus personalizing the presentation in a way to attend to the documented accessibility needs of the student. It would have been obvious to one of ordinary skill in the art at

the time the invention was made to compile data relating the use of the presentation options and the performance of the student and then using the data to modify the presentation options, thereby providing presentation options that are adaptive to their effectiveness to the student.

Re Claim 2: Kershaw et al. do not specifically disclose receiving parameters specifying the permitted presentation options for the student.

Knutson teaches that object models and metadata are used to identify preferences, attributes, characteristics, etc., of the student (Col. 20, Lines 48-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to receive parameters specifying the permitted presentation options so that the presentation options to be used can be easily identified.

Re Claim 5: Note that claim 5 recites similar limitations to that of claim 1, already discussed above in view of Kershaw et al., Corder, Knutson, and Whitehurst et al., except that claim 5 additionally includes the method steps of receiving an individual educational plan for a particular student, and converting the individual educational plan into an online profile that controls presentation options available to the student when taking an online exam. By comparison, claim 1 only receives the online profile.

Kershaw et al. do not specifically disclose receiving an individual educational plan or converting the individual educational plan into a profile.

Knutson teaches obtaining a learning profile and converting the learning profile into a learning profile object model or metadata, the object model or metadata containing learning proclivities, preferences, attributes, characteristics, etc., of the user (Col. 20, Lines 48-61).

It would have been obvious to one of ordinary skill in the art to receive an individual educational plan and convert the individual educational plan into an online profile, thus creating a database for the purpose of identifying presentation options without other extraneous information of the individual educational plan and qualifying data.

Re Claims 6, 7, 10, 14, 16, and 18: Note that claims 6, 7, 8, 10 include limitations of an apparatus comprising modules for performing the method steps of claims 1, 2, and 5, respectively. The limitations of new claims 14, 16, and 18 have also been discussed in claim 1 above.

Kershaw et al. disclose that the system is computerized with different components (Col. 3, Line 60-Col. 5, Line 3) and that the system should be modular so that each component can be modified or replaced easily (Col. 3, Lines 53-56).

4. Claims 4, 9, 11, 13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw et al. (US Patent No. 5,565,316) in view of Corder (US Patent No. 5,387,104), Knutson (US Patent No. 7,050,753), and Whitehurst et al. (US Patent No. 6,978,115) as applied to claims 1, 5, 6, and 10 above, and further in view of Rogers (*TOEFL CBT Practice Tests*).

Re Claims 4, 11, 13, 15, and 17: Kershaw et al., as modified by Corder, Kutson, and Whitehurst et al., teach the limitations of claims 1, 5, 6, and 10.

However, they do not specifically teach providing a practice area for the student to submit answers to practice questions, not part of the online exam, using the presentation options.

Rogers teaches that online tests such as the TOEFL® include practice areas simulating the test questions and format, not part of the online exam (Page 1, “You need only...”; Page 3, “What format does...”).

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a practice area, allowing the student to become familiarized with the exam and practice questions in a way that is not counted for or against the student’s score. As discussed in claim 1 above, questions are presented using a presentation option.

Re Claim 9: Note that claim 9 includes limitations of an apparatus comprising modules for performing the method steps of claim 4.

Kershaw et al. disclose that the system is computerized with different components (Col. 3, Line 60-Col. 5, Line 3) and that the system should be modular so that each component can be modified or replaced easily (Col. 3, Lines 53-56).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 4-6, and 9-10 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the Rogers reference, a copy should have been included with the last office action, and another copy will accompany this office action. The sections relied upon in the office action above are as follows:

“You need only minimal computer skills to take the computer-based TOEFL. You will have plenty of time at the test center to work through a tutorial that allows you to practice such activities as answering questions, using the mouse, using the word processor (which you will need for your essay responses), and accessing the help function.”

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"The computer based test is divided into four sections: Listening, Structure, Reading, and Essay Writing, each with its own time limit. The four sections are always given in the same order. Before the actual test, you must take a tutorial that demonstrates the computer skills needed to take the test. This part is ungraded, of course, and untimed. Most test-takers take approximately 40 minutes to complete this section. The first three sections consist mainly of multiple-choice questions, while essay writing is a single essay-writing item."

Thus Rogers discloses providing a practice area for the student to submit answers to practice questions, not part of the on-line exam, in order to become familiarized with the testing format.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Cheung whose telephone number is (571) 270-1349. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VC

Victor Cheung  
November 14, 2007



RONALD LANEAU  
PRIMARY EXAMINER

11/17/07